IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 175 of 1989

Date of decision: 9-5-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?	Yes
2. To be referred to the Reporter or not?	Yes
3. Whether their Lordships wish to see the fair copy of the judgment?	No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?	No
5. Whether it is to be circulated to the Civil Judge?	No

PARIKH JAYANTKUMAR GIRDHARBHAI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

Mr. K. G. Vakharia, Sr. Advocate with Mr GR UDHWANI for Petitioners

MR HS MUNSHAW for Respondent No. 1

None present for Respondent No. 2

Mr. Samir Dave for Respondent No. 3

None present for Respondent No. 4

Mr. N.K. Majmudar for the interveners

CORAM : MR.JUSTICE S.K.KESHOTE

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CAV JUDGEMENT

The petitioners, 15 in all, have filed this special civil application before this court praying for issuance of a writ of mandamus or any other writ in the nature of mandamus directing the respondents to fill up all the vacant posts of junior clerks in Ahmedabad District Panchayat by giving appointments to the persons whose names are in the select list prepared in response to the advertisement No.25-27/82-83 of the second respondent.

2. The facts of the case briefly stated are that respondent No.2 - District Panchayat Service Selection Committee, Ahmedabad, invited application vide advertisement No.25-27/82-83 for the post of junior clerk in the Ahmedabad District Panchayat. It is not in dispute that under the aforesaid public advertisement, applications were invited by respondent No.2 for 20 posts of junior clerks. Bifurcation of the vacant posts is that 17 posts were for the reserved category and 3 posts were for general category. It is not in dispute that all the petitioners belong to general category. In response to the said public advertisement the petitioners submitted application. The petitioners were called for written tests which was conducted in the month of October,1983. On the basis of the marks obtained by the candidates in the written test, it is the case of the petitioners, the respondent No.2 has prepared select list wherein names of the petitioners are included. In the select list name of 71 persons were included. Respondent No.2 under letter dated 24th February, 1984 informed the petitioners that their names are placed in the select list. In the year 1986, 26 candidates from the select list were given appointment to the posts of junior Clerks in the office of the District Panchayat, Ahmedabad. No further appointment has been made from the said select list, as given out by the petitioners, because on account of scarcity the Government has put ban on recruitment to vacant posts. The ban was made applicable to the recruitment of junior clerks in the office of the District Panchayat, Ahmedabad also. The petitioners further stated that the aforesaid ban was there for the year 1987 and also for the year 1988. In the month of September, 1988 the ban was lifted, and since then there was no ban on recruitment to the post of junior clerks. The petitioners urged that during the years 1986-87 and 1987-88 (ban period) more than 40 posts of junior clerks fell vacant in the set up of the District Panchayat, Ahmedabad. The select list prepared, as per the case of

the petitioners,is in operation even today. The select list remains in operation until fresh select list is prepared. It was the duty of respondent No.1 ,as per the case the petitioners, to fill up the aforesaid vacant posts of junior clerks by giving appointment to the persons from the select list. The petitioners' grievance is that with ulterior motives the respondents are not filling up those posts of junior clerks in spite of many oral representations made by them from time to time. Further grievance of the petitioners is that the District Panchayat has filled up 5 posts of junior clerks by inter-District transfers. Details of those interDistrict transfers have been given in annexure-C. There is no dispute between the parties that only five persons were appointed by inter-District transfer. Further grievance of the petitioners is that respondent No.1 has filled up the posts of junior clerks by giving appointment to persons whose names are not there in the select list. It is not in dispute that services of 10 work charge clerks were regularised and 21 persons were appointed on compassionate grounds, and 10 persons were appointed by way of absorption of surplus persons from Sarvodaya Yojana Scheme.

3. Reply to the writ petition is filed by the respondent District Panchayat. It is admitted that five persons have been brought in to the District Panchayat by inter-District transfer. Services of 10 work charge employees were regularised. Ten employees of Sarvodaya Yojana Scheme have been absorbed in the service of District Panchayat, and 21 persons were given appointment on compassionate grounds.

4. Learned counsel for the petitioner made fourfold contentions in this special civil application. Firstly it is contended that when the selected candidates were available in the select list, before Sarvodaya employees were absorbed , those in the select list should have been given appointments. In support of this contention learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of Delhi Development Horticulture Employees' Union vs. Delhi Administration, reported in AIR 1992 SC 789. It has next been contended that the inter-District transfer was permissible only on mutual request. It is urged that inter-District transfer means that for five persons who were transferred in the Ahmedabd District Panchayat, five persons should have been sent therefrom to other district panchayats. Reference in this respect has been made to Rule 3 of the Gujarat Panchayat Services (Transfer of employees)Rules, 1968. It has next been contended that

instead of absorbing work charge employees in the regular establishment the persons who have been selected and placed in select list since 1983 should have been given appointments. In support of this contention learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of J. & K. Public Service Commission vs. Dr. Narinder Mohan, reported in 1994(2) SCC 630. Lastly the learned counsel for the petitioners contended that though compassionate appointments are permissible, but when selected candidates are available in the select list and are waiting for last many years, those persons should also have been given appointments.

5. On the other hand learned counsel for the respondent District Panchayat, Shri H. S.Munshaw and Shri N.K. Majmudar counsel for the intervenors contended that the petition is wholly misconceived; that the petitioners have no indefeasible right of appointment merely because their names have been empannelled. It has next been contended that even if the vacancies are available and the names of petitioners are there in the select list, it is not obligatory on the part of the respondent No.1 to make appointment, and the respondent can decline to make appointment from the select list for cogent and just reasons, which exactly has been done in the present case.

6. Mr. H.S. Munshaw, counsel for the District Panchayat further contended that the appointments could not be given to the petitioners as the Government had put ban on recruitment on the post of junior clerks which was just and reasonable ground. Appointments on compassionate grounds had to be given in preference to the selected persons. Similarly, absorption of surplus staff of Sarvodaya Yojana was in accordance with the resolution of the Government which has to be given effect to. Same is the case with absorption of work charge employees. So far as inter-District transfers are concerned, the counsel for respondent No.1 contended that it is permissible under the 1968 Rules. Lastly the counsel for respondent No.1 and Mr. M.K.Majumudar, counsel for the intervenors contended that the right of appointment of the selected candidates could have been there only against 20 posts which were advertised. The select list could not have been of indefinite currency, according to the counsel for the respondents. Appointment from the select list could have been made only against 20 posts and appointments from the select list could not have been made against the vacancies which have arisen subsequent to the preparation of select list.

Otherwise, any appointment made on these posts from the select list would be in violation of the provisions of Articles 14 and 16 of the Constitution of India. In support of this contention learned counsel for the intervenor placed reliance on the decisions of the Supreme Court in the case of Harnam Singh (dead)through L.R's. vs. Smt. Khema Kunwar (dead) through L.R's JT 1994(3) SC 559 and in the case of Madan Lal vs. State of J & K. 1995(3) SCC 486.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. In the case of Shankarasan Dash vs. Union of India, reported in JT 1991 (2) SC 380, it was held by the apex court that existence of vacancies do not give any legal right of appointment to selected candidates. In the case of Union of India vs. S.S.Uppal, reported in JT 1996 (1) SC 258, the apex court held that existence of vacancies does not give any legal right to selected candidates and inclusion of name of a candidate in the select list does not confer any right of appointment. In the case of State of Bihar vs. Md. Kalimuddin, reported in JT 1996 (1) SC 271, the apex court held that even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed, unless the relevant rules indicate to the contrary. Reference may also have to three decisions of this Court - in the case of Rathod Jahabhai Dangarbhai vs. State of Gujarat, reported in 1995(1) GLR 427; Narmadaprasad Shivprasad Mishra vs. Ahmedabad Municipal Corporation, reported in 1995(1) GLR 483, and in the case of Commissioner of Police vs. Santosh Vasant Mali, reported in 1995(2) GLR 1640. Speaking for the Division Bench, Hon'ble Chief Justice Shri B.N.Kirpal (as he then was) held that the persons placed on select list have no inherent right of appointment. The relevant discussion in para 10 of the judgment is as under:

"The Supreme Court has now categorically held in a series of judgments that a person who has been placed on the select list has no inherent right of appointment. In Shankarsan Dash vs. Union of India reported in AIR 1991 SC 1612 and in Sabita Prasad vs. State of Bihar reported in 1992(3) SCALE 361, it was held that a person who is selected does not, on account of being empanelled alone, acquire an indefeasible right of appointment. Empanelment was at the best a condition of eligibility for purposes of

appointment, and that by itself doesnot amount to selection or create a vested right to be appointed unless the relevant service rule says to the contrary. The said decisions were followed by the Supreme Court in the case of Asha Kaul vs. State of J & K reported in 1993 (2) SCC 573. In Asha's case (supra) though the select list was prepared, no vacancies, in respect of which the list was prepared, appeared to have been filled. It was only with regard to this that the Supreme Court observed that the exercise of preparation of a select list could not be reduced to a farce. The Supreme Court, contrary to what is sought to be contended before us by the learned Counsel for the respondents, did not observe that the select list is to remain in operation even after the notified vacancies had been filled. Even recently, two decisions of the Supreme Court have taken the same view. In State of Bihar vs. Secretariat Assistant S.E.Union reported in AIR 1994 SC 736, it has been held that a candidate who has been selected and empanelled does not acquire an indefeasible right to be appointed. In this case, the High Court had directed to appoint all the empanelled candidates according to their position in the merit list against the vacancies which had arisen after the date of advertisement and the preparation of the select list. The Supreme Court reversed the decision of the High Court and came to conclusion that issuance of such direction was not proper and could not be sustained. In that case, the advertisement had been issued in the year 1985. The High Court directed that even for vacancies which had come into existence thereafter should be filled from the select list prepared pursuant to 1985 advertisement. The Supreme Court while disproving this direction observed that: "Since no examination has been held since 1987, persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for no fault of theirs." In the present case also, the direction of the learned single Judge would have the effect of depriving those candidates who have become eligible for taking the examination after 31st December 1992 and in respect of those vacancies which are in excess of 983 which have already been filled and which appeared to have come into

existence after 31st December, 1992."

The learned counsel for the petitioner has failed to point out to the court any rule or regulation which provides any indefeasible right of appointment to the persons placed in the select list. The select list in the present case has been prepared in the year 1984 and it was not given effect to till 1986. In the year 1986 out of the select list 26 candidates were given appointment. It is not in dispute that all these 26 candidates were from serial No.1 to 26 in the select list. No person below the petitioner in the select has been given appointment. Thereafter not a single appointment has been made from the select list, and respondent No.1 has also given out the reasons for not giving any appointment from the select list. The reasons have been given out by respondent No.1 in the affidavit for not acting upon the select list from serial No.27 onwards are that apart from appointment by inter-district Transfer of five persons, 10 work charge employees were given regular appointment and 21 appointments were made on compassionate grounds and by absorption of 10 persons who were declared surplus from the irrigation scheme. These are the just and reasonable grounds on which the respondent District Panchayat could have legitimately denied the appiontment of the petitioners. Decisionon which reliance is placed by the counsel for the petitioners are clearly distinguishable and of little help in this case. Each case has to be decided on the basis of its own facts. The petitioners have not acquired any indefeasible right of appointment merely on the basis of inclusion of their names in the select list, as held by the Supreme Court as well as this court in various decisions. Otherwise also there is no merit in this petition. Admittedly 20 vacancies were advertised to be filled in by recruitment under the advertisement No.25-27/82-83. Though list of 71 candidates has been prepared, 26 persons have been given appointments. So, against the number of vacancies advertised appointments in excess have been made. I find sufficient merit in the submission made by the learned counsel for the respondents that more than 20 appointments from select list could not have been made, and in case any appointment is made on the vacancies which have arisen subsequent to the preparation of the select list, the same would be in violation of Articles 14 and 16 of the Constitution of India. The Supreme Court in the case of Prem Singh vs. Haryana State Electricity Board, JT 1996 (5) SC 219, held as under:

"Selection process by way of requisition and

advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the Court may not, while exercising its extra-ordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case."

9. I may now refer to the decision on which reliance has been placed by the learned counsel for the respondents. In the case of Madan Lal and others vs. State of J & K, reported in (1995) 3 SCC 486, the Supreme Court held as under:

"It is no doubt true that even if requisition is made by the Government for 11 posts the Public Service Commission may send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait-listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose. Since Rule 41 provides that the select list will have a life of one year from the date of publication in the Government Gazette or till exhaustion by appointment of candidates, whichever is earlier, it is not possible to accept the respondents' contention that during the period of one year

even if all the 11 vacancies are filled in for which requisition is initiated by the State in the present case and if some more vacancies arise during one year, the present list can still be operated upon because the Commission has sent the list of 20 selected candidates."

In the case of Commissioner of Police vs. S.V.Mali, 1995(2) GLR 1640, Division Bench of this Court, in para 11 and 12 of the judgment observed as under:

"The last decision on the point is that of State of Bihar vs. Madan Mohan Singh, reported in AIR 1994 SC 765. While following the earlier decision, it was observed that, where a particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list of 129 candidates which had been prepared was to hold good only for the purpose of filling up those 32 vacancies and no further. It was further held that the list got exhausted on 32 vacancies being filled despite the fact that the merit list contained the names of 129 candidates. In this connection, the Supreme Court observed that, if the select list was to be kept subsisting for the purpose of filling up other vacancies also, that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process.

The inescapable conclusion which follows from the aforesaid decisions of the Supreme Court is that a select list is valid in respect of only those vacancies as contemplated by the Government Resolution of 19th December, 1990. In other words, it is in respect of the actual vacancies in existence or anticipated vacancies within the period of one year in respect of which the select list can be in operation."

In this case, though admittedly appointment on more number of posts has been made, those appointments are not challenged by the petitioner and, as observed by the Supreme Court in the case referred to above, now the same may not be quashed and set aside. However, in case the prayer of the petitioner is accepted, the appointments are to be given to them only on the ground that their names are there in the select list and select list still

continues, then this court will compel respondent No.1 to fill up the posts which have been created much after preparation of the select list. This direction will affect the fundamental rights conferred on candidates who have acquired qualification and eligibility for appointment to the posts after the select list is prepared. This Court will not perpetuate the illegality sitting under Article 226 of the Constitution of India, nor this court will compel the respondents to act contrary to the provisions of Articles 14 and 16 of the Constitution of India.

10. Taking into consideration the totality of the facts of the case and the position of law as discussed above, none of the legal or fundamental rights of the petitioners has been infringed in the present case. No interference of this court is called for at the instance of the petitioners in this petition.

11. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

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